



U.S. Department of Justice

United States Trustee
Central District of California

411 W. Fourth St
Suite 9041
Santa Ana, CA 92701
(714) 338-3400
FAX (714) 338-3421

725 South Figueroa St.
Suite 2600
Los Angeles, CA 90017
(213) 894-6811
FAX (213) 894-2603

3685 Main St.
Suite 300
Riverside, CA 92501
(909) 276-6990
FAX (909) 276-6973

21051 Warner Center Lane
Suite 115
Woodland Hills, CA 91367
(818) 716-8800
FAX (818) 716-1576

GUIDE TO PREPARATION OF DISCLOSURE STATEMENTS ("DISCLOSURE STATEMENT GUIDE")

Under § 1125 of the Bankruptcy Code (11 U.S.C. §101 et seq., the "Code"), the bankruptcy court is required to determine whether a disclosure statement contains adequate information. One of the statutory responsibilities of the United States Trustee is to comment to the court with respect to the adequacy of disclosure statements. 28 U.S.C. §586(a)(3)(B). The following is a list of informational items that the United States Trustee normally expects to see in an adequate disclosure statement.

- 1. Purpose of the Disclosure Statement:** Explain that the purpose of the disclosure statement is to provide adequate information to enable a hypothetical reasonable member of a class of creditors or shareholders to make an informed judgment concerning the plan. The statement should not resort to "boilerplate" language that disclaims all of the assumptions and dollar amounts contained in the disclosure statement. Such a disclaimer is not only confusing, but undermines the effectiveness of the statement.
- 2. Description of the Debtor:** Describe the debtor and the debtor's business, including a brief narrative description of the reasons for the debtor's financial difficulties and the steps taken to alleviate the situation since the inception of the case. The description should address any factors that may be unusual or peculiar to the business, such as seasonal cycles and unique product lines.
- 3. Management:** Disclose the identities of top management, their qualifications and salary levels. Include the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, or any affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan, specifically noting the identity of any insider who will be employed by the reorganized debtor.
- 4. Description of the Plan:** Describe the major provisions of the plan, including each class of creditors, the approximate dollar amount of the claims in each class, and the treatment of unclassified claims (unsecured taxes and administrative expenses). Include an estimated date by which creditors can expect to receive payment and the expected percentage return on their claims. The *Effective Date* of the plan should be clearly spelled out, as well as any *Bar Date* that has been set. The description does not have to be detailed and may refer to the plan.
- 5. Insider and Affiliate Claims:** Disclose the claims asserted by insiders as defined by §101(31) of the Code, including the identity of the claimant, the affiliation of the insider with the debtor, the circumstances giving rise to the claim, the amount of the claim, and/or whether any or all of such claims have been subordinated and the reasons for such subordination.

6. **Means of Performing the Plan:** Indicate how the debtor intends to accomplish the goals of the plan, i.e., whether by infusion of cash by an investor, sale of real or personal property, continued business operations, issuance of stock or otherwise. If an investor is to provide funds, financial information regarding the investor's ability to provide such funds should be included.
7. **Stock Issued for Debt:** If the debtor plans to issue stock for all or part of its debt, indicate if such stock is exempt from securities laws under § 1145 of the Code and describe the stock or securities, including information such as voting rights, interest rate, accumulation of dividends, liquidation preference, potential market values after confirmation, the existence of other classes of stock, whether the market for the stock is limited, any restrictions on transferability, etc. The debtor should state whether the stock is registered under § 5 of the Securities Act or, if not, what exemption from registration is claimed and the basis for such claim.
8. **Historical and Current Financial Information:** Include historical and current financial data including cash flow statements, profit and loss statements, and balance sheets from at least the date of filing to the present. The balance sheets should indicate whether they were audited and identify the accountants who prepared them. Also indicate, possibly in a separate schedule, the debtor's estimate of current values of assets and the bases for the estimates (i.e., cost or appraisals). Valuations must reflect fair market value, not book value or some other measure.
9. **Projections:** Of equal importance is projected post-petition financial data -- using the same assumptions as used in preparing the historical financial information -- including a balance sheet reflecting the anticipated financial condition of the debtor on the date that the plan is projected to be confirmed. Use of spreadsheets is encouraged. In order to allow full analysis, financial information must be provided on both a cash and accrual basis. The identity of the accountants who assisted in preparation of the financial projections should also be disclosed. Include projections as far into the future as is practicable, including assumptions used in formulating the projections, such as expected sales levels, gross and net profit levels and inventory acquisition. At a minimum, the period covered by the projections should be commensurate with the period of payment deferral under the plan.
10. **Marketing Efforts:** Indicate what efforts the debtor has made to market its properties that are currently for sale, including the identity of the listing agent, the listing price, any offers received or anticipated, pending litigation that might affect the sale of the property, the equity in the property (including the source of the valuation), and any alternatives for marketing the property.
11. **Cash Requirements/Administrative Claims:** Indicate what administrative claims are outstanding (including any unpaid United States Trustee quarterly fees and estimates of claims for expenses not yet incurred) and whether any administrative claim holders have waived their right under the Code to be paid in cash at the time of confirmation. Indicate the source of cash to pay these claims. If the debtor expects a cash infusion from an outside source or from principals that must be later repaid, the identity of the source as well as the repayment terms should be disclosed. Similarly, the effect of such infusions (i.e., principal and interest payments) should be reflected in the projections.
12. **Liquidation Analysis:** Section 1129(a)(7)(A) of the Code provides that if any class of claims or interests is impaired under the plan, each holder of a claim or interest in that class must either accept the plan or the amount each holder receives under the plan must be greater than what that holder would receive if the debtor were liquidated under chapter 7. Thus, the plan should indicate the present value of the payments to each creditor under the plan and compare the

percentage return to claim holders with what the holders would receive under a chapter 7 liquidation. Obviously, such an analysis requires assumptions regarding liquidation values, administrative costs, etc., and these assumptions and the bases for them should also be disclosed. The analysis should be set forth in tabular form, listing and valuing all assets and liabilities, and setting forth the percentage payout to unsecured creditors under a liquidation.

13. **Absolute Priority Rule:** Section 1129(b) provides that if an impaired class has not accepted the plan, the court may not confirm the plan unless it does not discriminate unfairly, and is fair and equitable, with respect to each impaired class of claims or interests. The disclosure statement should indicate whether the plan meets this standard with respect to every impaired class, and should specifically indicate whether any holder of any claim or interest that is junior to the claims of an impaired class will receive or retain any property under the plan, on account of such junior claim or interest. The import of the absolute priority rule should be explained to creditors in simple English.
14. **Legal Proceedings:** Briefly describe all material legal proceedings to which the debtor is a party, proceedings the debtor contemplates instituting, and legal proceedings that have been threatened against the debtor. The information should include the court in which the litigation is pending, its present status, the relief sought, the debtor's prognosis for the outcome, and the effect, if any, on the plan. Disclose the procedures for objecting to claims and exercise of the trustee's avoiding powers.
15. **Tax Analysis:** Describe the plan's tax impact on the debtor, the debtor's equity interest holders and creditors.
16. **Vote Required for Approval:** Indicate which classes are impaired and entitled to vote and the vote required for approval of the plan. Also, clearly indicate that creditors or interest holders can choose to vote for or against the plan.
17. **Post-petition Events:** Indicate whether any major post-petition events have occurred that might affect the case, such as the appointment of a creditors' committee, a trustee, an examiner or the existence of litigation with significant consequences to the ability of the debtor to meet the plan requirements.
18. **Information Regarding Risks to Creditors Under the Plan:** Briefly describe any risks that might impede the debtor's ability to perform under the plan or otherwise meet the plan's requirements.